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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,223	08/29/2003	Tetsuo Takata	031082	7640
23850	7590	11/17/2004	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP			EDELL, JOSEPH F	
1725 K STREET, NW			ART UNIT	PAPER NUMBER
SUITE 1000				3636
WASHINGTON, DC 20006			DATE MAILED: 11/17/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/651,223	TAKATA, TETSUO
	Examiner	Art Unit
	Joseph F Edell	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 24 August 2004.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 7-13 and 18-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 14-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 August 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>08/29/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species I, Figures 1-4, in the reply filed on 24 August 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Applicant groups claims 1-6, 8-11, and 13-17 as reading on the elected Species I. However, claims 8-11 and 13 are dependent upon claim 7, which reads on a non-elected species. Therefore, claims 7-13 and 18-25 are withdrawn, and claims 1-6 and 14-17 are examined herein.

### ***Claim Objections***

2. Claims 15 and 17 are objected to because of the following informalities: "the protrusion (claim 15, line 1 and claim 17, lines 1-2) should read --the at least one protrusion--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,381,715 to Forman.

Forman discloses a shelf assembly that includes all the limitations recited in claims 1-4 and 14-17. Forman shows a shelf assembly having a shelf support (Fig. 2) with a fixing part 8 (Fig. 2) and a fall prevention part 7 (Fig. 2), a shelf body 1 (Fig. 1) with a cavity 4 (Fig. 6) to encase the shelf support, a projecting body 9 (Fig. 2) on the shelf support that extends from the fixing part wherein the fall prevention part is arranged on the projecting body, a leaf spring structure 10 (Fig. 2) on the fall prevention part, at least one protrusion (Fig. 10) at an inner edge of the cavity of the shelf body formed into at least one of a line and a dot, and a bent part 11 (Fig. 7) engaged with the at least one protrusion.

5. Claims 1, 2, 5, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by JP Publication No. 2001-161588 to Koto.

Koto discloses a shelf assembly that includes all the limitations recited in claims 1, 2, 5, and 14. Koto shows a shelf assembly having a shelf support 1 (Fig. 1) with a fixing part 2 (Fig. 1) and a fall prevention part (Fig. 6), a shelf body 3 (Fig. 2) with a cavity 8 (Fig. 5) to encase the shelf support, a board 2a (Fig. 1) formed on the fixing part with a plurality of projecting bodies 7,8 (Fig. 1) at both ends of the fixing part, and a protrusion 4 (Fig. 6) at an inner edge of the cavity of the shelf body.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koto.

Koto discloses a shelf assembly that is basically the same as that recited in claim 6 except that the fixing part is not of an L-shaped board, as recited in the claim. However, it would have been an obvious matter of design choice to make the specific L-shaped board, since such a modification would have involved a mere change in shape of the rectangular board of Koto. A change in shape is generally recognized as being within the level of ordinary skill in the art since Applicant has not disclose that having the specific shape solves any stated problem or is for any particular purpose and it appears the board would perform equally well with any well known shape.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to shelf assemblies:

U.S. Pat. No. 2,584,438 to Du Boff et al.	U.S. Pat. No. 3,025,122 to Millman
U.S. Pat. No. 3,215,387 to Thompson et al.	U.S. Pat. No. 3,527,175 to Kapneck
U.S. Pat. No. 3,704,675 to Bellasalma	GB Publ. No. 2 232 345 A to Gruttis

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JE  
November 14, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600